App I IX 4

Previous References 1944-45 (Mle)

Mle File No 23-44
Serial Nos 65, 66

Later References

GENERAL AND REVENUE SECRETARIAT

Serial Nos Two

10

Part B for June 45

SUBJECT

Orders of Govt, whether the resolution passed by the Trust Board not to interfere in regard to the acquisition of a portion of site no 15 (1058) in Block no 67 Krishnaraja Mohalla, - shall stand or whether the resolution of the Mle CC to reacquire the site should be given effect to

To

The Chairman,
City I I Board,
Mysore

L 12638 dated 29/6/45

States that there can be no room for dispute in this case between the Mysore CC Mle CC and the I Bd in as much as the loan in dispute does not in any way vest in the I. Bd after the sale of the said loan to the Private Party.

Mle
4/8

Letter No D2-C 17/44-45 dt 4-9-44 from the Chairman, City Improvement Trust Board Mysore requesting orders of Govt whether the resolution passed by the Trust Board not to interfere in regard to the acquisition of a portion of site no 15 (1/C58) in Block no 67, Krishnaraja Mohalla measuring 93 ft by 20 ft should stand or whether the resolution of the Govt to reacquire the said site should be given effect to. Sirdar Mr Rao Bahadur may perhaps be consulted.

A/

Attn 29/9

I will endorse if approved

Law Secy 3 Oct

Secretariat 3261 2 OCT 1944

Govt 2-10-44

Endorsement

Asst Secy Law 2 Oct

Submitted.

MRV 3/10

The facts of the case are briefly as follows-

3 Oct 44

A portion of site no 15 1, Krishnaraja mohalla, Mysore, was acquired by the Trust Board in 1926 has been given back to the party as per resolution dt 31 3 38 and was found unnec

ssary to acquire it the party got the license renewed in 1961. The Municipal Council subsequently resolved that that site must be acquired and pray for a stay order Kind re

The point for consideration is whether the Municipal Council resolution could override that already passed by the City Improvement Trust Board so as to cancel the license and the acquire the site in question

Kind ref is invited to the detailed report of the Chairman (Fg B) and the the opinion of the Municipal Advocate (Fg K) S 115 cl 2 and 7 authorise the Council to refuse or suspend a license until all questions of location of building have been decided to its satisfaction and ch XXIII of the Mys City Bye laws (pages 197-211) which regulate the construction of buildings other structures Kind ref is invited to S 21 of the City of Mys Improvement Regn 1903 as which vests streets and open spaces in the Municipal Commissioner Under the circumstances, it is submitted whether the resolution of the Board is to stand as whether the Council may not perhaps take direct action except through acquisition proceedings Copy of the city Mld Bye-laws is furnished for ref

MWH
6.10.66

From the letter (Fs D) it will be seen that 'O' was the site originally acquired to continue the road C D to join E F G. as per plan annexed Now that a new road A B (30') for is proposed to be formed, it will connect C D and I G leading to E F G & a branch that pond it is filled up and the gardens have recently been acquired by the Trust Board & it will thus appear that as per resolution of the Board, the acquisition ~~of the Board~~ of that portion of land that is unnecessary for the construction of a road

Kind ref is invited to the City Improvement Regulation 1903 (Mys Code Vol III page 69) S 19 of the Regulation says, that land vested in municipal councillors and required by Board for formation or alteration of street be vested transferred in the Board provided it does not affect the rights of the Councillors in or over any wet drainage or waterwork S 21 says, that after the completion will not be in and be maintained by the Municipal councillors Any dispute between the two is to be settled by Govt Under cl (3) of S 21

Sections 22 23 authorise the Board to acquire land by agreement, if not otherwise than by agreement under the Land Acquisition Regulation S 25 authorises the Board to acquire and hold property and lease or sell or otherwise convey such property

Under the City Municipalities Act, the City Council can compulsorily acquire land by recourse to the Land Acquisition Act only (ref to S 43 City Municipalities Act Mys Code Vol IX) page 206 - It does appears that it cannot as in the case of the Trust Board acquire land by agreement

Kind ref is invited to Sections 108, 109 and 175 of the City Municipalities Act Under the S 108, the Council should during formation of a regular line of public street has to issue a notice to the party and wealth person to pull down the line. Same Sections S 115 refers to notice of building from to construction and to appeal cl(7) to amend the construction of the building if it contravenes any law

It appears thus that the Trust Board had authority to acquire the site in question and consequently unnecessary later on had power to reconvey and issue a valid licence for construction a building. It will thus appear the unsuccessful Council cannot ask for a stay order, but can only appeal both to acquire the land and proceed under the Land Acquisition Regulation

9 10 44

The plot in dispute was acquired by the West Brain, & later as it was not required, the Trust Board sold that site to a private party. This is perfectly in order.

Here it is clear that the plot in question was in a private party & was not the property of the Trust Board.

It is not clear from the records as to why the party applied to the Trust Board for a licence & built on the plot originally, he should apply to the Municipality.

If the Municipality wants to ~~have the plot~~ prevent the party from building on it, as they want the plot for laying out a road, then the only course left open to them is to acquire that land

9 50 after, the ten-

1817/L

Should there be any dispute as to
the case between the Commissioners
of Inland Revenue, inasmuch as
the Land is disputed does not in any
way vest in the Trust Board after
the sale of the said land to a
private party.

Law Secretary) 11/10/44

Ans 12/10/44

[illegible] 24/10/44

[illegible] 19/10

The Law officers consulted to
Counsel's orders

[illegible] 23/10

[illegible] 25/10

Should in the draft letter accordingly

[illegible] 25

[illegible] 26/10/45

The Chairman C.S.I. Board Review

L/1263/14/23-44-66 of 29-6-45

Writes making enquiries in the matter

TYPING SECTION
26 JUNE 1945
EN & STY SECTT

13

No. C 17/44 A5 (Encl-3)

Office of the Chairman,
City Improvement Trust Board, Myso

Dated 4th September 1944

FROM

R. RAMACHANDRA RAO BHOMBORE, Esq , B A.,
CHAIRMAN,
City Improvement Trust Board,
Mysore

To

C Narayanaswamy Naidu, Esq , B.A , B L.,
Legal Remembrancer & Secretary to the Government of
His Highness the Maharaja of Mysore, Law Department,
Bangalore

Sir,

I have the honour to state that a portion of Site No 15(1058) in Block No 67, Krishnaraja Mohalla, measuring 93' x 20' was acquired from one Mr.M Rama Rao Powar for forming a conservancy lane and an award in this respect was passed for Rs 260/- in the year 1926 The award amount was kept - under deposit as the party did not received the amount During the life-time of Mr Rama Rao Powar he was petitioning the Trust Board for the restoration of the portion of site acquired from him as the other portion left over was too small for building purposes and as the acquisition was unnecessary in view of a pond previously existing near the site having been since filled up But the Trust Board Resolved at their Meeting held on 13th February 1935 not to restore the land but that the lay-out of the area as a play-ground might be taken up

2 After the death of Mr Rama Powar one Mr M K Gopal Rao Powar a nephew of the previous owner again put in a representation praying for the restoration of the portion of the above site acquired by the Board in view of the Trust Board having started acquisition-proceedings in respect of the properties of one Mr Bank Linganna for laying out a separate conservancy - lane from North to South in the same area which rendered the acquisition of of the portion of his site unnecessary This subject came up before the Board at its Meeting held on 30th March 1938 and it was resolved that as - the property was not required by the Board it may be sold to the person - from whom it was acquired for the amount of compensation paid The compensation amount which was held under deposits was paid to the party who in return remitted the full amount to the Board

3 On 30th July 1941 Mr Madhava Rao Powar to whose possession the site had been in the meanwhile transferred through sale by the previous

P T O

owner applied for a license to construct a building on the site and the license was duly granted to him After he commenced construction, a petition signed by certain residents of the locality protesting against the construction of a building on the site was received in the office on 1st November 1941 through Mr P Seetharamiah, a Member of the Trust Board. Mr Madhava Rao Powar was served with a notice to stop construction and the petition was placed before the Trust Board at the Meeting held on 26th November 1941 At the Meeting it was resolved by a majority of Members not to interfere with the old resolution of the Board Mr Madhava Rao Powar was therefore permitted to proceed with the construction of the Building as per modified plans submitted by him

4 On 3rd December 1941 thirteen Councillors of the Municipality sent in a requisition for holding a Special Meeting of the Municipal Council to consider the Resolution tabled by them to urge the Trust Board to re-acquire the site restored by the Board to the owner, for purposes of laying out a road east to west connecting the Seeneerkatte Road with Kasipathi Laya etc The Special Meeting of the Municipal Council was held on 17th December 1941 and the marginally noted two resolutions were carried

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Resolution No.1.- Subject No 370 'A' "Resolved that the area that is being built as site No 69 (License No 159/91-92 dated 30-7-41) Soppinakola Street, Krishnaraja Mohalla be reacquired, if that has been sold as a site by the Trust Board so that a road may be laid out east and west connecting the Seeneerkatte road with Kashipathi Laya and the remaining portion be kept open for having a play-ground for children of the locality "

Proposed by Mr P Sitaramiah
Seconded by Mr B Narayanaswamy

Carried

Resolution No.2 - Subject No 370 'B' "Resolved that an endorsement be sent to the licensee to stop further construction of the said building pending this question of acquisition"

Proposed by Mr P Sitaramiah
Seconded by Mr T Narasimha Iyengar.
Carried.

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5 The President had meanwhile addressed a letter to the Municipal Advocate on 4-12-41 (copy enclosed) requesting him to intimate whether the issue of a stay order as desired by the Municipal Council preventing Mr Madhava Rao Powar from proceeding with the construction on the site would not give rise to an "actionable claim" since the site had been properly sold by the Board and the license had been renewed on 30-7-41

In his reply dated 17th December 1941 a copy of which is enclosed the Municipal Advocate was of opinion that the license having been once issued neither the Municipal Council nor any person on behalf of it can cancel it or withdraw it or issue a stay order unless the construction contravened Clause 7 of the Section 115 viz , that during the progress of the work it was found to contravene any of the provisions of the Act or Bye-Laws He further opined that the ground that a new stree was to be formed or that the space should be kept open as a - play ground could not be a valid one falling under Clause 7 and that therefore no valid stay order could be issued and tha if issued it would not bind the party.

5 In view of the opinion expressed by the Municipal Advocate no stay order was issued The owner however did no immediately construct the building but was getting his license renewed, the last renewal being on 22-5-1941. After the last renewal the owner seems to have made arrangements for starting the work and thereupon the congress party in the Municipal Council through their leader Mr P Seetharamiah has addressed a - letter to the President, requesting him to cancel the license granted to Mr Madhava Rao Powar to give effect to the Resoluti passed by the Council at the Special Meeting held on 17-12-194 The Trust Board which had once acquired the site restored it t the previous owner on 30-3-1938/as it was no longer required for their purposes and again resolved on 26-11-1941 not to interfe with the previous resolution, but the Municipal Council resolved that the site may be re-acquired and kept open as a play ground Since there has thus been a conflict of opinion betwe the Trust Board and the Municipal Council, the matter is now re ferred to Government for decision under the provisions of Section 21 (3) of the Mysore City Improvement Regulation 1903 and I request you to be so good as to obtain an early decision of Government in the matter whether the Resolution passed by the Trust Board not to interfere in the matter shall stand or -- whether the Resolution passed by the Municipal Council should

be given effect to. I may however add in this connection that there is a proposal to form a 30' road north to south marked 'A' 'B' on the plan enclosed. There is no need to continue road 'C' 'D' to join the cross road 'E''F' 'G', as the main road 'A' 'B' connects the road 'C' 'D' to Chamaraja Road The Board originally acquired the land 'O' to form a road as the pond 'H' was not filled in Now the pond is - filled up and the road 'I' 'J' is continued to join road 'A' 'B'. Moreover, the Soppinakola Gardens in this area have been very recently acquired by the Trust Board at a cost of Rs.13,136/- to keep it as a lung space and when the garden is removed and the area improved it will provide recreation amenities by having a play-ground, park etc Hence re-acquisition of site 'O' becomes unnecessary.

6. Favour of early orders is solicited

I have the honour to be,
Sir,
Your most obedient servant,

Chairman.

HRS

Memo No 415 dated 4th December 1941 from the President, City Municipal Council, Mysore, to the Municipal Advocate, Mysore

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Thirteen of the Mysore City Municipal Councillors have sent me a requisition for convening a Special General Meeting for considering the following Resolution

> "Resolved that the area that is being built as site No 69 (License No.159/91-92 dated 30th July 1941), Soppinakola Street, Krishnaraja Mohalla be reacquired, if that has been sold as a site by the Trust Board, so that a road may be laid out East and West connecting the Seeneerkatte road with Kashipathi Laya and the remaining portion be kept open for having a play ground for children of the locality, and an endorsement be sent to the licensee to stop further construction of the said building pending this question of acquisition "

I wish to state in this connection that this particular site which had been acquired by the Trust Board has been given back to the party as per their Resolution No 10 dated 31st March 1938 and on a similar petition from the local residents very recently the Trust Board Members inspected the place and felt that it was unnecessary to acquire this bit of land and that the agrahar road may be continued as originally resolved and they therefore considered that there was no need to reconsider their original resolution

The site has been properly given by the Trust Board to the party and the license which had been issued as early as 11th March 1939 has been renewed on 30th July 1941

The Members of the Municipal Council request that a stay order be issued I would be obliged if you will examine this matter and let me know whether I could in the above circumstances issue a stay order and whether such issue may not give rise to an 'actionable claim'

In this connection, please see Section 17 (1) of the Land Acquisition Act, There is no provision in the case of buildings or building sites similar to that for waste or arable land

Please send me a very urgent reply

" Copy "

HRS

Chairman

CITY IMPROVEMENT TRUST BOARD MYSORE

MYSORE,

Dated ~~24th August~~ 4th September *1944*

Note No 152 dated 17th December 1941 from the Municipal Advocate, Mysore, to the President, City Municipal Council, Mysore

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Subject - Whether a 'Stay Order' could be issued without being liable for an actionable claim for reasons contained in the Resolution referred to in the Memo No 415 dated 41-12-1941

With reference to your Memo No 415 dated 4-12-41 desiring the furnishing the legal opinion on the matter, I have the honour to state that any person intending to construct, alter, add or reconstruct any building shall have to give notice of the same in writing according to S 115 of the Municipal Act, after observing the conditions laid down therein, and obtain the permission of the President and then proceed with the work The Municipal Act empowers the Municipal Council (President, the power being delegated to him) after exercising his discretion to refuse or suspend or modify the permission sought, on the grounds laid down in Cl (2) and the Bye-laws framed thereunder found on pages 197 to 211 Accordingly the Municipal Council can refuse or suspend a licesse only when the building to be corstructed contravenes or violates the conditions laid down in the Act and the Bye-laws This exercise of the power refers to before the issue of the license The discretion - having been exercised and the license issued, neither the -- Municipal Council nor any person on behalf of it can cancell it or withdraw the license or issue a stay order unless the construction contravenes Cl 7 of the Section viz , that during the progress of the work if it is found to contravenes any of the provisions of the Act or the Bye-laws The responsibility to withdraw or suspend the license after its issue would be - greater than before its issue The fact that a new street is to be formed or that the space should be kept open as a playground for the children of the locality, cannot in my opinion

be considered a valid ground falling under Cl.7 contravening the provisions of the Act or the Bye-laws. Hence no valid stay order could be issued and even if issued may - not bind the party.

No doubt the Municipal Council is authorised to effect improvements either by forming new roads or keeping x spaces open as lung space removing the congestion or provide a play ground for children of the locality and they would be well within their rights to take action therefor The Act lays down a procedure in such cases viz , that a notice in such cases of its intention has to be published and the particular owner has to be served with a notice, calling forth objections if any within a month from the date of such publication and service of notice and after considering the objections preferred if any they will have to move the Government, (The Trust Board) for the acquisition of the property after payment of the compensation amount to the party, valued at the time of acquisition The question of license is quite independent from that of acquisition for purposes of improvement

Hence I am of opinion that no stay order can be issued and even if issued it may not bind the party To effect improvements in the locality the Municipality will have to start acquisition proceedings. Nevertheless -- there is nothing prohibiting in the Act from informing the party the Municipal Councils' intention to effect improvement in the locality, with no binding effect leaving the party to act in his best interest

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" Copy "

Chairman.

HRS.

L-12638-ML23-44-66

Do 29/6/44

The Chairman, City Impt Trust Board Mysore

Sir,

With reference to your letter no D2 - 6 17/44-45, dt 4-9-44, requesting orders of Govt as to whether the resolution passed by the C.I. Trust Board not to interfere in regard to the acquisition of a portion of site no 15 (1058) in Block no 67, Krishnaraja Mohalla or whether the resolution of the municipal Council to reacquire the said site, ~~should~~ may be given effect to, I am directed to state that, it is seen from the records that the plot in dispute was acquired by the Mysore City Impt Trust Board and later, as it was not required, the Board sold that site to a private party. ~~There is no property in order~~ It is therefore clear that the plot in question vests in a private property and that it is not the property of the Trust Board

It is however, not clear from the records, as to why the party applied to the Trust Board for a license to build on his plot, as ordinarily he should have applied to the Mysore City Municipality for the same

If the Mysore city Municipal Council want to prevent the party from building on the above site, as they want the plot for laying out a road, then the only course left open to them, is to acquire that land

I am to add that there can be no room for dispute in this case, between the Mysore city Municipal Council and the Trust Board, in as much as the land in dispute does not in any way vest in the Trust Board after the sale of the said land to the private party

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for
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R [illegible]

Chairman,
City Improvement Trust Board,
Mysore